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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MEREK, JOSEPH C

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 11/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Office Action Summary

Application No.

09/867,581

Applicant(s)

PRZYTULLA ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-13,15-20 and 25-45 is/are pending in the application.
- 4a) Of the above claim(s) 19,20,22,23,25-28 and 31-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/31/01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group II in Paper No. 6 is acknowledged.

The traversal is on the ground(s) that examination of the all the claims would not impose an unreasonable burden on the examiner. This is not found persuasive because applicant has not presented any evidence supporting his allegation that a single search would encompass all the pending claims. Applicant cited section 803.01 of the MPEP that is incorrect and does not relate to an election of species. See below from MPEP section 803 that indicates which paragraphs involve election of species.

Insofar as the criteria for restriction or election practice relating to claims to genus-species, see MPEP § 806.04(a) - § 806.04(i) and § 808.01(a).

Section 808.01(a) copied below describes the election of species

808.01(a) Species

Where there is no disclosure of relationship between species (see MPEP § 806.04(b)), they are independent inventions and election of one invention following a requirement for restriction is mandatory even though applicant disagrees with the examiner. There must be a patentable difference between the species as claimed. See MPEP § 806.04(h). Since the claims are directed to independent inventions, restriction is proper pursuant to 35 U.S.C. 121, and it is not necessary to show a separate status in the art or separate classification.

A single disclosed species must be elected as a prerequisite to applying the provisions of 37 CFR 1.141 to additional species if a generic claim is allowed.

Even if the examiner rejects the generic claims, and even if the applicant cancels the same and admits that the genus is unpatentable, where there is a relationship disclosed between species, such disclosed relation must be discussed and reasons advanced leading to the conclusion that the disclosed relation does not prevent restriction, in order to establish the propriety of restriction.

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Election of species should not be required if the species claimed are considered clearly unpatentable (obvious) over each other. In making a requirement for restriction in an application claiming plural species, the examiner should group together species considered clearly unpatentable over each other, with the statement that restriction as between those species is not required.

Election of species should be required prior to a search on the merits (A) in all applications containing claims to a plurality of species with no generic claims, and (B) in all applications containing both species claims and generic or Markush claims.

In all applications in which no species claims are present and a generic claim recites such a multiplicity of species that an unduly extensive and burdensome search is required, a requirement for an election of species should be made prior to a search of the generic claim.

In all applications where a generic claim is found allowable, the application should be treated as indicated in MPEP § 809.02 (b), § 809.02 (c), or § 809.02 (e). If an election is made pursuant to a telephone requirement, the next action should include a full and complete action on the elected species as well as on any generic claim that may be present.

Prior to determining an allowable generic claim, the only proper traverse for an election of species is to state on the record that the species are not patentably distinct and provide evidence supporting the statement. New claims 31-33 depend from claim 19 and are therefore withdrawn as being drawn to the non-elected invention.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the indentation is substantially V-shaped only at the corner sections", "the indentation is substantially flat at a point on the wall section intermediate the corner sections", and "indentation has a vertical thickness that is substantially zero at a point on at least one of the side wall

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sections substantially intermediate the corner sections" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 4 show(s) modified forms of construction in the same view. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4, 6-13, 15-18, 29, 30, and 34-45 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 1, 36, and 43, it has not been adequately disclosed how the indentation is substantially v-shaped is only at the corners. This is in conflict with the drawings as seen in Fig. 4, the substantially V-shape extends well beyond the corners of the container. The taper of the indentation begins just after the central axis

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of the container and the indentation is substantially V-shaped well prior to the corner. Moreover, the right half of the drawing shows that the corner indentation 24 includes the rounded area that extends well beyond the corner. The parallel lines that define the indentation in the sidewall terminate into this rounded area as seen in Fig. 4. The drawings show that the indentation is V-shaped in the corners but do not show that the indentation is not substantially V-shaped elsewhere. Regarding claims 1, 15, 30, 36, and 43, there is not adequate support for the limitation "substantially V-shaped". The specification refers to a V-shaped indentation. Regarding claim 4, 10, 38, 44, it has not been adequately disclosed how the cross-section is substantially circular. The disclosure states on page 4, line 19, the cross-section is stated as being "generally round". On page 4, line 23, the cross-section is stated as being "nearly circular". Roget's II, The New Thesaurus on page 663 equates the term nearly with about, almost, approximately, and roughly. These terms do not equate to substantially. Moreover, the generally round and nearly circular terms, both of which are stated to relate to the Fig. 5, are not consistent with each other. Regarding claims 4, 10, 13, 38, and 44, there is not adequate support for the limitation that the first cross-section is substantially rectangular or substantially square. The original specification states on page 4, line 17 that the first cross-section is generally square. Regarding claim 41, it has not been adequately disclosed how the indentation has a thickness that is smallest at a point intermediate the corners. The drawings show the parallel lines that define the bottom of the indentation extending all the way around the container and through the point in the middle of the sidewall. Regarding claims 35 and 42, it has not been

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adequately disclosed how the indentation is substantially flat at a point on the side wall sections intermediate the corner sections and that the thickness is substantially zero at a point on at least one of the side wall sections substantially intermediate the corner sections. Moreover, these two limitations are in conflict with each other. According to claim 42, the indentation has no thickness at the wall sections substantially intermediate the corner sections. If this is the case then there is no indentation in this location.

Claim 35 states that the indentation is substantially flat in the same location. Moreover, with respect to claim 42, with the at least one language would allow for the other walls to have an indentation at this same location. There is no support for this possibility.

The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 6-13, 15-18, 29, 30, and 34-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 4, 10, 38, and 44, as seen in the drawings the cross-section at the indentation has flat areas where it meets the sidewalls. It is not clear how this is substantially a circular cross-section. It is not clear what is being claimed. Regarding claim 17, there is not antecedent basis for the limitation V-shaped. It is unclear what is being claimed. Regarding claims 1, 15, 30, 36, and 43, there is not adequate support for the limitation "substantially V-shaped". The specification refers to a V-shaped indentation. It is not clear what is being claimed. Regarding claims 34, 29, and 45, it is unclear what is

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being claimed by the "substantially intermediate the end portions". The intermediate allows for the indentation being between the two ends. It is not known how substantially modifies the term intermediate. It is not clear what is being claimed. The remaining claims are included since they stem from rejected claims.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-13, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Roper '899. Regarding claim 10, as it is best understood, there are angular indentations between the intersections of the sidewall sections. The indentations define a second cross-section that is different from a first portion of the sidewall that defines a first cross-section. The first cross-section is generally square and the second cross-section is generally round or nearly circular since the corners are rounded. Regarding claim 11, the second portion (the indentation) divides the first portion into upper and lower sections. Regarding claim 12, the indentation is located within the claimed percentages. Regarding claim 13, as it is best understood, the cross section is generally square. Regarding claim 17, as it is best understood, there is not antecedent basis for the limitation "V-shaped" and therefore is not required by the claim. Regarding claim 18, the protrusions are seen as 58 for stiffening the end wall.

Claims 10-13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 2522094. Regarding claim 10, as it is best understood, see Fig. Where the drum is shown. The angular indentations 10 are found between the

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intersections of the sidewall sections. The cross-section of the first portion is generally square and the cross-section of the second portion is generally round or nearly a circle. Regarding claim 11, the second portion (the indentation) divides the first portion into upper and lower sections. Regarding claim 12, the indentation is located within the claimed percentages. Regarding claim 13, as it is best understood, the cross section is generally square. Regarding claim 15, see Fig. 7, where part of the indentation is v-shaped. Regarding claim 16, the indentations do not meet. Regarding claim 17, as it is best understood, the indentations are in the specified range and do not have to be V-shaped. Regarding claim 18, the protrusion that is found around the openings in the end wall will stiffen the end wall.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6, 8, 9, 11, 12, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper '899 in view of Virog, Jr. et al. Regarding claim 1, as it is best understood, Roper '899 does not teach that the indentation is V-shaped. Virog, Jr. et al teaches a similar container with a circumferential indentation that is V-shaped as seen in Fig. 2. It would have been obvious to employ the shape of Virog, Jr. et al in

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the container of Roper '899 to provide an alternative shape for the indentation as taught by Virog, Jr. et al. The v-shape extends through the corners. Regarding claim 4, as it is best understood, the first cross section is generally square and the cross-section at the indentation is nearly a circle since it has rounded corners. This is language that is supported by the disclosure. Regarding claim 6, the indentation is located between the claimed percentages. Regarding claim 8, the reinforcing ring 61 is seen in Figs. 1 and 3, has at least one arcuate portion and allows for the rolling of the drum about the reinforcing ring. Regarding claim 9, see Fig. 1, where there are round reinforcing ribs in the end wall. Regarding claim 11, the second portion divides the first portion into upper and lower sections. Regarding claim 12, the second portion is found at the specified height. Regarding claim 17, as it is best understood, the indentation is V-shaped and at the specified height. Regarding claim 18, see Fig. 2, where the protrusions are 58 on the end wall.

Claims 1, 4, 6, 29, 30, and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2522094 in view of DE 9408722. Regarding claims 1 and 34, as they are best understood, DE2522094 teaches a generally square container for storage with angular indentations but does not teach the circumferential carrying and transport ring. DE 90408722 teaches a generally square a storage and transport container with a circumferential transport and carrying ring. It would have been obvious to employ the ring of DE 9048722 in the container of De 2422094 to provide for automated or easier transportation of the container. Regarding claims 4 and 38, as it is best understood, the first cross-section is generally square and the second cross-section is generally round

or nearly circular. Regarding claim 6, the indentations fall in the specified height.

Regarding claim 29, the indentation is deepest in the corner and becomes shallower as it transitions into the sidewalls. Regarding claims 30 and 37, as it is best understood, the indentation is V-shaped in a plane extending parallel to the longitudinal axis as seen in Fig. 7. Regarding claims 35 and 36, as they are best understood, the indentation is substantially flat intermediate the corner sections since it transitions into the flat side walls and the V-shape is only in the corners.

Claims 1, 4, 6, 10-15, 17, 18, 29, 30, 34-38 and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '22 in view of Virgo, Jr. et al. Regarding claims 1 and 39, DE '722 does not teach the claimed protrusion on the sidewall. Virgo, Jr. et al as seen in Figs. 1 and 2, teaches a similar container with a indentation in the side wall. It would have been obvious to employ the indentation of Virgo, Jr. et al in the container of DE '722 to reinforce the sidewall. Regarding claims 40 and 41, the thickness is greatest in the corners since the indentation tapers in the sidewall as seen in Fig. 1. Regarding claim 42, as it is best understood that the thickness is the smallest intermediate the corner sections. Regarding claim 43, as it is best understood, the indentation is V-shaped in the corners. Regarding claim 44, as it is best understood, the first cross-section is generally square and the second cross-section is generally round or nearly circular. Regarding claims 29 , 34, and 45, see Fig. 4, where it is shown by Virgo, Jr. et al that the indentation of the modified container of DE '722 is deeper in the corner at 20 then the adjacent area on the side of the container and the indentation tapers into the sidewall.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Virgo, Jr. et al. as applied to claim 1 above and further in view of Snyder et al. Regarding claim 7, the modified container of DE '722 does not teach the longitudinal indentation. Snyder et al as seen in Fig. 1, teaches a sidewall corrugated in both the circumferential and longitudinal directions. It would have been obvious to employ the longitudinal indentations of Snyder et al in the modified container of DE '722 to prevent the sidewall bulging when stacked or to allow for a thinner side wall as taught by Snyder et al in Col. 5, lines 32-43.

Claims 1, 4, 6, 8-13, 15, 17, 18, and 34-38 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Sugiura et al. Regarding claims 1, 10, 34 and 45, as they are best understood, DE '722 does not teach the indentations being deeper in the corners. Sugiura et al as see in Figs. 1 and 2, teaches a indentation in the side wall that is deeper in the corners. It would have been obvious to employ the indentation of Sugiura et al in the container of DE '722 to reinforce the sidewall. The indentation in the modified container of DE '722 is V-shaped. Regarding claims 4 and 38, as it is best understood, the first cross-section is generally square and the second cross-section is generally round or nearly circular. Regarding claims 6, 12, and 17, the indentation is found in the specified height range. Regarding claim 8, see Figs. 1a of DE 722 where 60 is the ring. Regarding claims 9 and 18, see Fig. 1b, where 44 is the rib in the end wall. Regarding claim 11, the second portion divides the first portion into upper and lower sections. Regarding claim 13, as it is best understood, the first cross-section is generally square. Regarding claim 15, as it is best understood, the

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indentation is V-shaped in the corners and the second cross-section is generally round or nearly circular. Regarding claim 29, the indentations are deepest in the corners and become shallower as they transition into the sidewalls. Regarding claim 30, as it is best understood, the indentation is V-shaped. Regarding claim 35, as it is best understood, the bottom of the indentation is flat intermediate the corners. Regarding claim 36, as it is best understood, the indentation is V-shaped in the corners. Regarding claim 37, as it is best understood, the indentation is V-shaped in the specified plane.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Sugiura et al as applied to claim 1 above, and further in view of Snyder et al. Regarding claim 7, the modified container of DE '722 does not teach the longitudinal indentation. Snyder et al as seen in Fig. 1, teaches a sidewall corrugated in both the circumferential and longitudinal directions. It would have been obvious to employ the longitudinal indentations of Snyder et al in the modified container of DE '722 to prevent the sidewall bulging when stacked or to allow for a thinner side wall as taught by Snyder et al in Col. 5, lines 32-43.

Response to Arguments

Applicant's arguments with respect to claims 1, 4, 6-13, 15-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DE 3603105 is cited for teaching a corrugated barrel. Johnson is cited for teaching a corrugated structure that has deeper corrugations in the corners.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

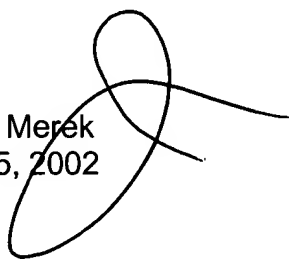
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Joseph C. Merck
October 25, 2002



LEE YOUNG
SUPERVISORY PATENT EXAMINER
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